JOE McMAHON, JR.

IBLA 95-581 Decided March 18, 1998

Appeal from a Decision of the Deputy State Director, Wyoming, Bureau of Land Management, affirming Casper District Office approval of inclusion of certain lands within the Sultan Unit Agreement. SDR No. WY-95-08.

Affirmed.

1. Oil and Gas Leases: Unit and Cooperative Agreements

When a unit agreement has been approved by BLM as to participating tracts and acreage, BLM may properly decline to unilaterally reform such agreement by excluding therefrom a tract alleged to have been improperly included by a party holding a mineral interest in such tract.

APPEARANCES: Joe McMahon, Jr. pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Joe McMahon, Jr. (McMahon), has appealed from a June 9, 1995, Decision by the Deputy State Director, Wyoming, Bureau of Land Management (BLM), affirming a May 4, 1995, approval of the Sultan Unit (SU) Agreement by the Reservoir Management Team (RMT) of BLM's Casper District Office. At issue in this appeal is BLM's commitment to the unit of certain lands designated as Tract 42. McMahon contends that Tract 42 is partially unleased and should not have been committed to the unit.

Tract 42 is described as the E½ of sec. 32 and W½ of sec. 33, T. 33 N., R. 70 W., Sixth Principal Meridian. The file indicates that these lands became subject to State of Wyoming oil and gas leases, entered into in May and June 1990, by Mary P. Moeller and Adlyn Moeller Van Steenburg (lessors), and David W. Holwegner (lessee).

On March 7, 1995, Vastar Resources, Inc./Rush Creek Agreement Services (Vastar) filed with BLM's Casper District Office an application for designation of a proposed unit area for the SU Agreement in Converse County, Wyoming. Vastar proposed the designation of 19,811.98 acres, more or less,

comprising 7,401.21 acres of Federal lands, 880 acres of State lands and 11,530.77 acres of patented lands, as a logical unit area for exploration and development under the unitization provisions of the Mineral Leasing Act, as amended, 30 U.S.C § 226(m) (1994). With its application, Vastar enclosed exhibits showing the boundaries of the various tracts and leases in the proposed unit area, as well as serial numbers and expiration dates of all Federal leases within the proposed unit area.

In his April 7, 1995, acknowledgment of Vastar's application, the Acting Chief of BLM's RMT, advised that in order to

> ensure the timely handling of units submitted for final approval, proponent must show 100 percent commitment of all lessees of record, basic royalty owners, and working interest owners, or evidence that every such owner of interest in the unit has been given an opportunity to join the unit agreement. If any owner fails or refuses to join, evidence of reasonable efforts to obtain a joinder should be submitted, together with a copy of each refusal by an operator giving the reasons for nonjoinder. If a refusal letter cannot be obtained, unit proponent should provide, in writing, a record of the attempts made to obtain joinder.

On April 27, 1995, Vastar filed with BLM copies of the Unit Operating Agreement and ratification and joinder instruments executed by the participants. In its cover letter, Vastar advised, inter alia, that

> ownership to tract 42 has been under review. Upon completion of title examination, counsel to the Unit Operator has determined that 100% of tract 42 is currently leased by Vastar Resources, Inc. * * * Therefore, as Unit Operator, we hereby certify tract 42 ownership to be correct as reflected on Exhibit "B."

Vastar's exhibit "B" is a schedule showing percentage and kind of ownership in oil and gas interests in the SU Area. It lists Vastar and Amoco Production Company as the lessees of record of 100 percent of Tract 42.

In an April 10, 1995, letter to Vastar, McMahon alleged an error in the ownership under Tract 42, asserting that Vastar had incorrectly represented to BLM that Tract 42 was leased in its entirety. McMahon stated:

> The Converse County Records clearly show that the interest of Karen Moeller was never conveyed back to Mary P. Moeller when she leased the minerals under this tract. As such, this tract cannot be committed to the unit unless the open mineral owners commit their interest. Unless all of the open mineral interest

> is committed along with the working interest, this tract cannot be committed to the unit and the leases will expire within the next month or two.

At Vastar's request, its counsel filed with BLM a legal opinion on the matter. In an April 27, 1995, letter to BLM, counsel stated in part:

> 1. By oil and gas leases dated May 9, 1990 and June 7, 1990 recorded in Book 987, pages 692 and 693, respectively, Mary P. Moeller leased her mineral interest in the affected lands. At the time of the taking of these leases, Ms. Moeller had apparently granted 1.7857% out of her 25% mineral interest in these lands to her daughter.
>
> 2. Subsequent to the date of the leases and during their still extant primary term, Ms. Moeller's daughter re-conveyed, and Ms. Moeller re-acquired, this 1.7857% mineral interest in the affected lands.
>
> 3. At a point in time subsequent to both 1. and 2., and during the primary term of the leases, a Mr. Joe McMahon, Jr. purchased the 25% mineral interest owned by Ms. Moeller.

Counsel further offered his opinion that the Moeller leases embraced the entire 25-percent mineral interest and did not exclude the 1.7875 percent conveyed and reacquired by Mary P. Moeller.

In the decision appealed from, the Deputy State Director points out that according to BLM records, exhibit "B" of the approved SU Agreement

> shows Tract 42 as a fee tract with Vastar as 100% lessee of record and working interest (W.I.) owner. Records also show that the portion of Tract 42 that is in dispute by McMahon (3.125% W.I. ownership by Vastar with an expiration date listed as May 9, 1995) received commitment to the SU agreement. Exhibit "B" is also stamped with a disclaimer that approval of this (SU) agreement does not warrant or certify that the operator thereof and other holders of operating rights hold legal or equitable title to those rights in the subject leases which are committed hereto.

The Deputy State Director further stated that BLM had no ownership interest in Tract 42. Having evaluated McMahon's claim that Tract 42 was unleased, BLM concluded that it could neither resolve title ownership disputes as to Tract 42 nor ascertain legal title to those rights. The BLM's task was to accept the information submitted by the unit proponent and process the unit agreement proposal. The Deputy State Director determined that, pending resolution of the dispute among the parties or a court order indicating a change in ownership in Tract 42, that tract was properly committed to the SU Agreement.

[1] Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(m) (1994), authorizes lessees to unite to more properly conserve natural resources of any oil or gas field in collectively adopting and operating under a unit plan of development or operation "whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest." The SU Agreement was established under this authority. The Federal regulations governing unit agreements are found at 43 C.F.R. Subpart 3180. A unit agreement is a contract between the United States and participating parties for joint development and operation of an oil and gas field where substantial amounts of public lands are involved; it is essentially a contract between private parties, approved by the Department when Federal mineral estates are present, setting forth the rights and liabilities of the parties to the agreement. Orvin Froholm, 132 IBLA 301 (1995). A unit plan may then be adopted for an unproven oil and gas field considered suitable for exploration and operation as a unit. A unit agreement submitted to BLM "shall be approved by the authorized officer upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of more properly conserving natural resources." 43 C.F.R. § 3183.4(a). Where non-Federal lands such as state or privately owned lands are included within the unit, the agreement must be conformed with any laws or regulations applicable to such lands. 43 C.F.R. § 3181.4(a).

As to the specific question of competing claims of ownership among working-interest owners, Sec. II.C.4 of BLM Manual Handbook H-3180-1, pertaining to approval of executed unit agreements, provides that "[t]he ratification and joinders submitted with the agreement are checked against the lessees of record," but "[s]ince the basic royalty, lessee of record, and working interest ownership in State and fee lands cannot be verified, joinders by parties purported to [own] 1/ such interests are to be accepted as correct."

As stated in Froholm, supra, and in Shannon Oil Co., 62 Interior Dec. 252, 255 (1955), a unit agreement is a contract between private parties — lessees or holders of oil and gas rights in Federal, state, and privately owned lands. The fact that a unit agreement is subject to approval by the Secretary under the Mineral Leasing Act does not vest the Secretary with authority to reform a unit agreement. Coors Energy Co., 110 IBLA 250, 257 (1989); Shannon, supra, at 255. Essentially, the relief sought by McMahon, the removal of Tract 42 from the SU Agreement, would be such a reformation. As suggested in Shannon, if a tract of land is erroneously committed to, or excluded from, a unit agreement, it would be incumbent on the parties to the agreement to reform their agreement accordingly. The Deputy State Director correctly ruled that Tract 42 was properly included in the SU Agreement.

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1/ Although the cited provision actually uses the word "our," it is obvious that "our" is an error and that the correct word must be "own."

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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James P. Terry
Administrative Judge

I concur:

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T. Britt Price
Administrative Judge